

FIRST REGULAR SESSION

SENATE BILL NO. 579

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR STOUFFER.

Read 1st time February 26, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

2387S.02I

AN ACT

To repeal sections 197.305 and 197.318, RSMo, and to enact in lieu thereof three new sections relating to certificate of need, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 197.305 and 197.318, RSMo, are repealed and three
2 new sections enacted in lieu thereof, to be known as sections 197.305, 197.318,
3 and 197.368, to read as follows:

197.305. As used in sections 197.300 to 197.366, the following terms
2 mean:

3 (1) "Affected persons", the person proposing the development of a new
4 institutional health service, the public to be served, and health care facilities
5 within the service area in which the proposed new health care service is to be
6 developed;

7 (2) "Agency", the certificate of need program of the Missouri department
8 of health and senior services;

9 (3) "Capital expenditure", an expenditure by or on behalf of a health care
10 facility which, under generally accepted accounting principles, is not properly
11 chargeable as an expense of operation and maintenance;

12 (4) "Certificate of need", a written certificate issued by the committee
13 setting forth the committee's affirmative finding that a proposed project
14 sufficiently satisfies the criteria prescribed for such projects by sections 197.300
15 to 197.366;

16 (5) "Develop", to undertake those activities which on their completion will
17 result in the offering of a new institutional health service or the incurring of a
18 financial obligation in relation to the offering of such a service;

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 (6) "Expenditure minimum" shall mean:

20 (a) For **licensed** beds in existing or proposed health care facilities
21 licensed pursuant to chapter 198, RSMo, and long-term care beds in a hospital
22 as described in subdivision (3) of subsection 1 of section 198.012, RSMo, [six
23 hundred thousand] **one million** dollars in the case of capital expenditures, [or
24 four hundred thousand dollars in the case of major medical equipment,] provided,
25 however, that prior to January 1, 2003, the expenditure minimum for beds in
26 such a facility and long-term care beds in a hospital described in section 198.012,
27 RSMo, shall be zero, subject to the provisions of subsection 7 of section 197.318;

28 (b) For beds or equipment in a long-term care hospital meeting the
29 requirements described in 42 CFR, Section 412.23(e), the expenditure minimum
30 shall be zero; and

31 (c) For health care facilities, new institutional health services or beds not
32 described in paragraph (a) or (b) of this subdivision one million dollars in the case
33 of capital expenditures, excluding major medical equipment, and one million
34 dollars in the case of medical equipment;

35 (7) "Health care facilities", hospitals, health maintenance organizations,
36 tuberculosis hospitals, psychiatric hospitals, intermediate care facilities, skilled
37 nursing facilities, residential care facilities and assisted living facilities, kidney
38 disease treatment centers, including freestanding hemodialysis units, diagnostic
39 imaging centers, radiation therapy centers and ambulatory surgical facilities, but
40 excluding the private offices of physicians, dentists and other practitioners of the
41 healing arts, and Christian Science sanatoriums, also known as Christian Science
42 Nursing facilities listed and certified by the Commission for Accreditation of
43 Christian Science Nursing Organization/Facilities, Inc., and facilities of
44 not-for-profit corporations in existence on October 1, 1980, subject either to the
45 provisions and regulations of Section 302 of the Labor-Management Relations Act,
46 29 U.S.C. 186 or the Labor-Management Reporting and Disclosure Act, 29 U.S.C.
47 401-538, and any residential care facility or assisted living facility operated by
48 a religious organization qualified pursuant to Section 501(c)(3) of the federal
49 Internal Revenue Code, as amended, which does not require the expenditure of
50 public funds for purchase or operation, with a total licensed bed capacity of one
51 hundred beds or fewer;

52 (8) "Health service area", a geographic region appropriate for the effective
53 planning and development of health services, determined on the basis of factors
54 including population and the availability of resources, consisting of a population

55 of not less than five hundred thousand or more than three million;

56 (9) ["Major medical equipment", medical equipment used for the provision
57 of medical and other health services;

58 (10)] "New institutional health service":

59 (a) The development of a new health care facility costing in excess of the
60 applicable expenditure minimum;

61 (b) The acquisition, including acquisition by lease, of any health care
62 facility[, or major medical equipment] costing in excess of the expenditure
63 minimum;

64 (c) Any capital expenditure by or on behalf of a health care facility in
65 excess of the expenditure minimum;

66 (d) Predevelopment activities as defined in subdivision (13) hereof costing
67 in excess of one hundred fifty thousand dollars;

68 (e) Any change in licensed bed capacity of a health care facility which
69 increases the total number of beds by more than [ten or more than ten] **twenty-**
70 **five** percent of total bed capacity[, whichever is less, over a two-year period];

71 (f) Health services, excluding home health services, which are offered in
72 a health care facility and which were not offered on a regular basis in such health
73 care facility within the twelve-month period prior to the time such services would
74 be offered;

75 (g) A reallocation by an existing health care facility of licensed beds
76 among major types of service or reallocation of licensed beds from one physical
77 facility or site to another by more than ten beds or more than ten percent of total
78 licensed bed capacity, whichever is less, over a two-year period;

79 [(11)] **(10)** "Nonsubstantive projects", projects which do not involve the
80 addition, replacement, modernization or conversion of beds or the provision of a
81 new health service but which include a capital expenditure which exceeds the
82 expenditure minimum and are due to an act of God or a normal consequence of
83 maintaining health care services, facility or equipment;

84 [(12)] **(11)** "Person", any individual, trust, estate, partnership,
85 corporation, including associations and joint stock companies, state or political
86 subdivision or instrumentality thereof, including a municipal corporation;

87 [(13)] **(12)** "Predevelopment activities", expenditures for architectural
88 designs, plans, working drawings and specifications, and any arrangement or
89 commitment made for financing; but excluding submission of an application for
90 a certificate of need.

197.318. 1. The provisions of section 197.317 shall not apply to a
2 residential care facility, assisted living facility, intermediate care facility or
3 skilled nursing facility only where the department of social services has first
4 determined that there presently exists a need for additional beds of that
5 classification because the average occupancy of all licensed and available
6 residential care facility, assisted living facility, intermediate care facility and
7 skilled nursing facility beds exceeds ninety percent for at least four consecutive
8 calendar quarters, in a particular county, and within a fifteen-mile radius of the
9 proposed facility, and the facility otherwise appears to qualify for a certificate of
10 need. The department's certification that there is no need for additional beds
11 shall serve as the final determination and decision of the committee. In
12 determining ninety percent occupancy, residential care facility and assisted living
13 facility shall be one separate classification and intermediate care and skilled
14 nursing facilities are another separate classification.

15 2. The Missouri health facilities review committee may, for any facility
16 certified to it by the department, consider the predominant ethnic or religious
17 composition of the residents to be served by that facility in considering whether
18 to grant a certificate of need.

19 3. There shall be no expenditure minimum for facilities, beds, or services
20 referred to in subdivisions (1), (2) and (3) of section 197.317. The provisions of
21 this subsection shall expire January 1, 2003.

22 4. As used in this section, the term "licensed and available" means beds
23 which are actually in place and for which a license has been issued.

24 5. The provisions of section 197.317 shall not apply to any facility where
25 at least ninety-five percent of the patients require diets meeting the dietary
26 standards defined by section 196.165, RSMo.

27 6. The committee shall review all letters of intent and applications for
28 long-term care hospital beds meeting the requirements described in 42 CFR,
29 Section 412.23(e) under its criteria and standards for long-term care beds.

30 7. Sections 197.300 to 197.366 shall not be construed to apply to litigation
31 pending in state court on or before April 1, 1996, in which the Missouri health
32 facilities review committee is a defendant in an action concerning the application
33 of sections 197.300 to 197.366 to long-term care hospital beds meeting the
34 requirements described in 42 CFR, Section 412.23(e).

35 8. Notwithstanding any other provision of this chapter to the contrary:
36 (1) A facility licensed pursuant to chapter 198, RSMo, may increase its

37 licensed bed capacity by:

38 (a) Submitting a letter of intent to expand to the division of aging and the
39 health facilities review committee;

40 (b) Certification from the division of aging that the facility:

41 a. Has no patient care class I deficiencies within the last eighteen months;
42 and

43 b. Has maintained a ninety-percent average occupancy rate for the
44 previous six quarters;

45 (c) Has made an effort to purchase beds for eighteen months following the
46 date the letter of intent to expand is submitted pursuant to paragraph (a) of this
47 subdivision. For purposes of this paragraph, an "effort to purchase" means a copy
48 certified by the offeror as an offer to purchase beds from another licensed facility
49 in the same licensure category; and

50 (d) If an agreement is reached by the selling and purchasing entities, the
51 health facilities review committee shall issue a certificate of need for the
52 expansion of the purchaser facility upon surrender of the seller's license; or

53 (e) If no agreement is reached by the selling and purchasing entities, the
54 health facilities review committee shall permit an expansion for:

55 a. A facility with more than forty beds may expand its licensed bed
56 capacity within the same licensure category by twenty-five percent or thirty beds,
57 whichever is greater, if that same licensure category in such facility has
58 experienced an average occupancy of ninety-three percent or greater over the
59 previous six quarters;

60 b. A facility with fewer than forty beds may expand its licensed bed
61 capacity within the same licensure category by twenty-five percent or ten beds,
62 whichever is greater, if that same licensure category in such facility has
63 experienced an average occupancy of ninety-two percent or greater over the
64 previous six quarters;

65 c. A facility adding beds pursuant to subparagraphs a. or b. of this
66 paragraph shall not expand by more than fifty percent of its then licensed bed
67 capacity in the qualifying licensure category;

68 (2) Any beds sold shall, for five years from the date of relicensure by the
69 purchaser, remain unlicensed and unused for any long-term care service in the
70 selling facility, whether they do or do not require a license;

71 (3) The beds purchased shall, for two years from the date of purchase,
72 remain in the bed inventory attributed to the selling facility and be considered

73 by the department of social services as licensed and available for purposes of this
74 section;

75 (4) Any residential care facility **or assisted living facility** licensed
76 pursuant to chapter 198, RSMo, may relocate any portion of such facility's current
77 licensed beds to any other facility to be licensed within the same licensure
78 category if both facilities are under the same licensure ownership or control, and
79 are located within six miles of each other. **Such relocation shall not require**
80 **approval by the health facilities review committee or be subject to any**
81 **other provision of sections 197.300 to 197.366;**

82 (5) A facility licensed pursuant to chapter 198, RSMo, may transfer or sell
83 individual long-term care licensed beds to facilities qualifying pursuant to
84 paragraphs (a) and (b) of subdivision (1) of this subsection. Any facility which
85 transfers or sells licensed beds shall not expand its licensed bed capacity in that
86 licensure category for a period of five years from the date the licensure is
87 relinquished.

88 9. Any existing licensed and operating health care facility offering
89 long-term care services may replace one-half of its licensed beds at the same site
90 or a site not more than thirty miles from its current location if, for at least the
91 most recent four consecutive calendar quarters, the facility operates only fifty
92 percent of its then licensed capacity with every resident residing in a private
93 room. In such case:

94 (1) The facility shall report to the division of aging vacant beds as
95 unavailable for occupancy for at least the most recent four consecutive calendar
96 quarters;

97 (2) The replacement beds shall be built to private room specifications and
98 only used for single occupancy; and

99 (3) The existing facility and proposed facility shall have the same owner
100 or owners, regardless of corporate or business structure, and such owner or
101 owners shall stipulate in writing that the existing facility beds to be replaced will
102 not later be used to provide long-term care services. If the facility is being
103 operated under a lease, both the lessee and the owner of the existing facility shall
104 stipulate the same in writing.

105 10. Nothing in this section shall prohibit a health care facility licensed
106 pursuant to chapter 198, RSMo, from being replaced in its entirety within fifteen
107 miles of its existing site so long as the existing facility and proposed or
108 replacement facility have the same owner or owners regardless of corporate or

109 business structure and the health care facility being replaced remains unlicensed
110 and unused for any long-term care services whether they do or do not require a
111 license from the date of licensure of the replacement facility. **Such**
112 **replacement shall not require approval by the health facilities review**
113 **committee or be subject to any other provision of sections 197.300 to**
114 **197.366.**

197.368. 1. Prior to licensing by the department of health and
2 senior services of any facility or beds required to obtain a certificate
3 of need on the basis of being a new institutional service or facility or
4 of any facility or beds exempt from the requirements of section 197.300
5 to 197.366, the owner of such facility shall provide an independently
6 audited statement to the department of health and senior services that
7 such facility complied with the certificate of need granted for that new
8 institutional health service or was exempt from such requirements.

9 2. If such owner is unable to verify compliance as required by
10 subsection 1 of this section, no license shall be granted by the
11 department.

12 3. Anyone submitting a false or misleading report required under
13 this section shall be guilty of a class D felony.

14 4. The owner of any facility or beds exempt from the
15 requirements of sections 197.300 to 197.366, may submit a request to the
16 department of health and senior services to verify its exemption from
17 such sections prior to beginning construction. Such decision shall be
18 considered final and subject to appeal but not preclude such owner's
19 responsibility from complying with subsection 1 of this section.

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